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Towards international justice between European Union and international law in interesting times

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Abstract: The aim of this paper is to put into practice and discuss what is happening at a European and global level in the sector of judicial cooperation for the protection and development of international justice due to the war in Ukraine. On the one hand we have the European Union as the main factor and protagonist that elaborates within the spirit of foreign and defense policy and with the help of the International Court of Justice, the International Criminal Court and with several forums the protection of human rights and the fight against international crimes. Cooperation, development, collaboration between different bodies and especially after the modification of the organization of Eurojust are points of investigation and criticism that do not leave without comments what is happening in our days in the sector of European and international

cooperation towards an international justice that has surpassed its limits as seen in recent years and as a harbinger of new stages for the coming years.

Keywords: ICJ; ICC; international justice; EU law; international law; Eurojust; judicial cooperation; multilateral cooperation.

Introduction

When we talk about international justice we immediately think of multilateral cooperation as the basis for justice based on peace on an international scene which is guided at the helm by the European Union and by the rules of international law. Efforts for truth and punishment of international crimes and not only as the main goal of international justice needs an international order based on the values of peace, security and the rule of law. These are principles that come more from those of the EU and beyond.

Within this context, the treaties concluded within the scope of the EU's external action unconditionally affirm multilateralism as a path that promotes international relations based on collaboration. The contribution of the EU to international justice

is broad and very interesting as it is divided into various stages. As for example to a constitutional path where dialogue is an important step for international cooperation according to the discipline of the treaties following the relationship between the EU and the International Court of Justice (ICJ), as well as the International Criminal Court (ICC). The super partes courts as jurisdictional forums contribute to the European Union's functioning and its involvement in every international crisis as we have seen since last year in the Ukraine and Russia conflict, such as the participation of ad hoc experts, outsiders, and judges who respect the work of the two courts. Thus the role of the EU aspires to and assumes an important role as a protagonist in international justice.

In international justice, international law provides a basic contribution to the debate regarding the fragmentation of the international legal system and the relationships that coexist between the different sub-systems in the international community. The EU represents an important point of reference as a regional integration body that constitutes an element of comparison for the relationships between the system of international law and domestic law and other international organizations as a level of cooperation that reaches subjects who are members. The problems a maiori ad minus in the practice of the EU of international importance are re-proposed to other

international organizations by identifying an opening mechanism in the internal legal system for specific, connected issues which concern the relationships between international law, especially the international constraints contracted as a whole of its member states and in international cooperation systems where the body itself and its members are contracting parties. The EU as a supranational system is functional and reconstructs mechanisms of dynamism and application of international law of the subjects of this system starting from the institutions and bodies of the EU. Thus the formal validity of international law is guaranteed in the internal legal system where its role assumes a prevalence in the mode of interpretation and an application system of this law within the context of the EU. The pervasiveness of the international law and the consistency that has been achieved through international rules that are directed by the EU can be invoked in the relationships between its own systems. It is obvious as a “customary law” that the mechanism of incorporation of international law into the legal system of the EU now presents repercussions in relation to the methods in which the individual legal systems of the Member States transpose and in practice apply the international rules now intercepted by the law of the EU taking into account the existing coordination between legal systems and the regulatory system of the Union. The regulatory

system of the EU arises and respects international law by defining international law as a use of work identifiable for the elements that allow distinguishing the system based on treaties, on jurisprudence as points of reference in the face of the fragmentation of data that derive from primary law and practice of the European institutions.

The EU as a “forum” of multilateralism and international justice

International justice is not connected with the EU through the principles of peace, security, the rule of law, democracy and respect for human rights and as current practice each time according to the topic of the conclusion of treaties in the relevant matter. The role of the EU for the promotion and defense of external action on the international stage is based on various aspects (Cremona, De Witte, 2008; De Baere, 2008; Cremona, 2011; Govaere, Lannon, Van Elsuwege, Adam, 2014), like statement no. 13 which is based on the common foreign and security policy. This is annexed to the final act of the conference for the adoption of the Treaty of Lisbon stating:

“(...) the European Union and its Member States will remain bound to the provisions of the Charter of United Nations (...) for the maintenance of

international peace and security (...)”¹.

Values that are also reported on their preambles. The TEU has already affirmed that the identity of Europe enhance the promotion of peace, security and progress in Europe and in the world (Blanke, Mangiamelli, 2021)². The Preamble of the TFEU reaffirmed and reported the principles of the statute of the United Nations showing the claim to ensure the relative respect and compliance on the part of the Union as well as the relationship with the remaining part of the international scene but with the countries of overseas (Blanke, Mangiamelli, 2021)³. Already Art. 3 TEU provided for the Union for the promotion of peace, the values where art. 2 refers to the well-being of its peoples (par. 1), the objective of action towards the defense and promotion of values and the related relations “with the rest of the world” (par. 5). One of the objectives is to promote mutual respect between all peoples thus contributing to:

“(...) observance and development of international law. In particular respect for the principles of the United Nations Charter” (Blanke, Mangiamelli, 2021).

Approaches, objectives, considerations that are developed in Art. 21 TEU on “respect for the principles of the United Nations Charter and international law” (art. 21, par. 1, TEU) are key

¹See the Declaration no. 13, 3rd paragraph relating to the common foreign and security policy, annexed to the final act of the Intergovernmental Conference which adopted the Treaty of Lisbon and signed on 13 December 2007: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A12016L%2FAFI%2FDCL%2F13>

²Preamble, lett. 11 of the TEU.

³Preamble, lett. 7 of the TFEU.

points for the definition of the general principles of the external action of the Union which acts according to the values announced in Art. 2 TEU with a teleological way to an internal dimension that is based and inspired by a sustained reality of an international scene that represents an approach of European integration and as a culmination of maturity of the founding principles and the general spirit of the principles of the EU. Already in 2012, the then President of the Commission, José Barroso, stated in this spirit that:

“(...) the European Union can be, and indeed is, a powerful inspiration for many around the world⁴. The values founding the experience of European integration become an essential parameter whose respect becomes mandatory in the development and implementation of external action and other policies in their external aspects (art. 21, par. 3, TEU) (...)”⁵.

Within this context the Court of Justice of the European Union (CJEU) functioned as a body of parallel attribution to the values of the Union and as a safeguard of the principles of external action and of its own competences which “must be exercised in respect for international law”⁶. Reading the words, principles,

⁴See the Nobel Lecture by the European Union (EU), Herman Van Rompuy, President of the European Council and José Manuel Durão Barroso, President of the European Commission, Oslo, 10 December 2012:
<https://www.nobelprize.org/prizes/peace/2012/eu/lecture/>

⁵See the Nobel Lecture by the European Union (EU), Herman Van Rompuy, President of the European Council and José Manuel Durão Barroso, President of the European Commission, op. cit.

⁶CJEU, C-162/96, Racke of 16 June 1998, ECLI:EU:C:1998:293, I-03655, par. 45. C-286/90, Poulsen and Diva Navigation of 24 November 1992, ECLI:EU:C:1992:453, I-06019, par. 9. C-402/05 P and C-415/05 P, joined cases: Kadi & Al Barakaat Int'l Foundation v. Council of 8 November 2008, ECLI:EU:C:2008:461, I-6351, par. 291. C-364/10, Hungary v. Slovak Republic of 16 October 2012, ECLI:EU:C:2012:630, published in the electronic Reports of the cases, par. 44.

values of the EU we remember the principles of the Charter of the United Nations which also indicate the obligation to respect the specific principles for the maintenance of international peace and security, as inspiring values of the United Nations according to Art. 1 of the Charter of San Francisco of 1945 (Pellet, 2014)⁷. Thus the link between the United Nations and the EU now present themselves after many years as privileged forums for cooperation, development and for the strengthening of global international relations within a framework of multilateralism and democracy as a response to common problems (Blanke, Mangiamelli, 2021)⁸. International organizations are testimonies of these difficult paths for every crisis that is unleashed on the planet to a status that always makes us remember Resolution 65/276 of 2011 of the General Assembly⁹ with a long majority of voting and participating countries and an EU that confers participatory and representation rights even without voting but comparable to member states (Blavoukos, Bourantonis, Galariotis, 2017; Wouters, Hoffmeister, De Baere, Ramopoulos, 2021)¹⁰.

⁷Art. 1, par. 1 of the Charter of the United Nations.

⁸See Art. 21 TEU and art. 220, par. 1 TFEU.

⁹<https://documents-dds-ny.un.org/doc/UNDOC/GEN/N10/529/10/PDF/N1052910.pdf?OpenElement>

¹⁰UN General Assembly, Resolution on Participation of the European Union in the work of the United Nations, 11 May 2011, UN Doc. A/RES/65/276: “(...) present positions of the European Union and its member States as agreed by them (...)” (Annex, §1). UN General Assembly, in Recorded Vote, Adopts Resolution Granting European Union Right of Reply, Ability to Present Oral Amendments, 3 May 2011, GA/11079/Rev. 1, New York, Sixty-fifth General Assembly. Council of the, Relations

The EU as a leading international regional organization recognizes the principles of the UN family, its global positions and principles¹¹. We can define an international, global and/or regional organization as an experiment in international multilateralism based on Articles 3, par. 5 and 21 TEU (Blanke, Mangiamelli, 2021) which represent the legal basis of a constitutional obligation for the EU which acts within the safeguarding of a world order for the protection and development of international relations as compared to the principles of the Charter of the UN (Weiler, 1999). Thus the EU works to prevent world conflicts, to foster peace and the promotion of international security according to the Charter of the San Francisco (Blanke, Mangiamelli, 2021)¹², a legal basis of ideas that are presented as results of situations of many years ago where international justice at that time was the ICJ and the first steps for the protection of human rights at a global level.

between the European Union and the United Nations EU-UN, European Union, Background, 1 September 2011.

¹¹According to the Resolution of the General Assembly in particular the representatives of the Union and especially the figures such as the President of the European Council, the High Representative, the European Commission of the EU at the United Nations to present the relative positions of the Union and the Member States they represent. Thus the EU has the right to intervene during the debates at the General Assembly, as well as to present the related proposals and amendments orally, to reply to issues and issues as well as to participate in works and committees, working groups of the General Assembly itself, at conferences, meetings and at summits which are convened by the UN organization itself.

¹²See, Art. 21, par. 2, lett. c), TEU.

ICJ and EU. Is it possible? What relationship do they have?

Respect for the ICJ at a global level as the jurisdictional body of the UN is now a silent habit on the international scene, including the EU. We have seen in its own integrative history that the EU has acted in various forums that have international jurisdiction in nature. We remember his intervention in the litigation before the International Tribunal of the Law of the Sea (Orellana, 2002)¹³ and also in the resolution of disputes in the World Trade Organization¹⁴.

Already the CJEU through Opinion 1/17 relating to the Free Trade Agreement between the EU and Canada (CETA) has declared the law of the EU as compatible with the relevant system of the principle of autonomy and the dispute resolution procedure in the sector of investment which was based on a multilateral investment court (Iorio, 2019; Eckes, 2020)¹⁵. The EU shows a lively involvement in intervening in various disputes at the international level, obviously including the ICJ. Of course, the EU cannot intervene directly in the dispute given

¹³International Tribunal for the Law of the Sea (ITLOS), Case concerning the Conservation and Sustainable Exploitation of Swordfish Stocks in the South-Eastern Pacific Ocean (Chile/European Union), Case No. 7. International Tribunal for the Law of the Sea (ITLOS), Request for an Advisory Opinion submitted by the Sub-Regional Fisheries Commission (SRFC) (Request for Advisory Opinion submitted to the Tribunal), Case No. 21 and the relevant statement of the EU.

¹⁴European Commission, WTO disputes-Cases involving the EU: https://policy.trade.ec.europa.eu/enforcement-and-protection/dispute-settlement/wto-dispute-settlement/wto-disputes-cases-involving-eu_it

¹⁵CJEU, Opinion 1/17 of 30 April 2019, ECLI:EU:C:2019:341, published in the electronic Reports of the cases, par. 110.

that this is a jurisdiction reserved only for states as provided for by Art. 34, par. 1 of the Statute ICJ. The intervention of the EU was based on endorsement and support actions of various types such as the jurisprudence of the CJEU, acts of secondary law of the institutions of a legal-political nature and declarations of official positions. Thus, forms of participation of an intense nature such as proceduralized and typified in the statute of the ICJ where the EU participated with concrete results and of a not only legal but also political nature are under discussion.

Ultimately, we can say that the CJEU functions with real pragmatism through a function that is exercised within the institutional framework. This pragmatism does not prevent the Luxembourg judges from being able to resolve individual cases without the need to distance themselves from the reality of the circumstances by resorting to theoretical models that respond to the needs of each proceeding. These models take practical paths in particular in the construction of the relationships that are established between the international law that is subject to reception by the EU and the individual legal systems of the Member States of the Union. The praxis of the CJEU is an element that represents in a “plastic” way the evolutionary capacity of the thinking of the courts of the EU. The practice of European integration is now an endless reality that can be traced back to the respect of international law with the main point

being the Kadi and Al Barakat International Foundation case where it was stated that:

“(...) the interpretation of law community is (...) based on the presumption that the community intends to honor its international commitments (...)”¹⁶. This is a process of integration of a supranational perspective within the general international order where the Union is firmly placed.

Between Hague and Luxembourg. Politics and European integration

The actions of the EU have taken into account paragraphs from decisions of all kinds from the jurisprudence of the ICJ. The CJEU has already authoritatively stated that:

“(...) the European institutions are required to respect international law in its entirety (...)”¹⁷.

It has been noted many times that the CJEU has relied on rulings of the ICJ and in disputes relating to the principles and rules of the international law especially of a customary nature and of the law of treaties (Higgins, 2003; Rosas, 2005). Above all, the principle of the pacta sunt serves as a key element of the international legal system which takes into consideration that every treaty is binding on the states that are part of it and that

¹⁶CJEU, see the conclusions of the Advocate General Poiares Maduro in case: C-402/05P and C-415/05P, Kadi and Al Barakat International Foundation, ECLI:EU:C:2008:11, I-06351.

¹⁷CJEU, C-366/10, Air Transport Association of America and others of 21 December 2011, ECLI:EU:C:2011:864, I-13755, par. 101 C-561/20, United Airlines of 7 April, 2022, ECLI:EU:C:2022:266, not yet published, par. 46.

consider it in good faith¹⁸.

Customary international air law, maritime law according to the provisions of the UNCLOS¹⁹ and the Chicago Convention on International Civil Aviation (ICAO)²⁰ are treaties that many times are taken into consideration by the EU either with its own adoption and/or because they make use through judgments relating to the matter that is not exclusive to the CJEU with disputes that are part of these types of treaties just mentioned.

The CJEU has also taken into account principles that are part of the consultative nature of the ICJ and in the opinions that come from the judges of the Hague. We also recall in the preliminary ruling regarding the interpretation of Regulation no. 1169/2011 that has to do with the provision of food information to consumers, i.e. related disputes that have to do with goods coming from territories occupied by the state of Israel²¹. Equally

18CJEU, C-162/96, Racke of 16 June 1998, op. cit., parr. 49 and 50 which is cited the case of Gabčíkovo-Nagymaros of the ICJ (ICJ, judgment of 25 September 1997, case relating to the Gabčíkovo-Nagymaros project, Hungary/Slovakia). See also, in the same direction, the remarks expressed, on the sidelines of the sentence on the Gabčíkovo Nagymaros Project case (Hungary/Slovakia), by Judge Weeramantry. In his separate opinion, par. 118: “(...) an era in which international law subserves not only the interests of individual states, but looks beyond them and their parochial concerns to the greater interests of humanity and planetary welfare. In addressing such problems, which transcend the individual rights and obligations of the litigating states, international law will need to look beyond procedural rules fashioned for purely inter partes litigation (...)”.

19CJEU, C-286/90, Poulsen and Diva Navigation of 24 November 1992, op. cit., par. 10.

20CJEU, C-366/10, Air Transport Association of America and others of 21 December 2011, op. cit., par. 104.

21CJEU, C-363/18, Vignoble Psagot Ltd of 12 November 2019, ECLI:EU:C:2019:954, published in the electronic reports of the cases, parr. 35, 48, 56, which is cited the consultive opinion from the ICJ of the 8 July 2004: Legal

important is the agreement between the EU and Morocco relating to the liberalization measures in the fields of fishing, agriculture and the applicability of Western Sahara where the CJEU has taken into consideration the customary principle of self-determination in the sense of international law provided for by the jurisprudence of the ICJ²². This type of vertical relationship authoritatively recognizes the ICJ as a jurisdictional forum of international law that is used, perhaps better to say incorporated, when needed to consolidate principles, notions and resolve cases in the legal system of the EU (Rosas, 2005) . It is not a question of who wins and/or whether international law influences EU law and/or the opposite within a dialogue that has been used so much in recent years. But we are talking about a type of recognition where the ICJ through an endorsement towards the work of the EU and in a broad way includes in its juridical-political nature the relevant products of the European institutions of broad support and direction. Within this context already in the past the former president of the ICJ Rosalyn Higgins stated that:

“(...) it is for us all to keep ourselves informed. Thus, the European Court of Justice will want to keep abreast of the case law of the International Court, particularly when it deals with treaty law or matters of customary

consequences of building a wall in the occupied Palestinian territories, ICJ Reports of 9 July 2004, par. 108.

²²CJEU, C-104/16 P, Council v. Front Polisario of 21 December 2016, ECLI:EU:C:2016:973, published in the electronic reports of the cases, parr. 88, 90, 104, 105, is cited the consultative opinion of the ICJ in case East Timor (East Timor (Portugal v. Australia), judgment, ICJ Reports 1995, p. 102, par. 29.

international law, and the International Court will want to make sure it fully understands the circumstances in which these arise for its sister court in Luxembourg (...)” (Higgins, 2003).

The dialogue between the courts manifests itself through a concordant position and through contrasting orientations. International judges are called upon to interpret and apply the law based on the objectives and purposes of the cooperation system they operate and are called upon to take into consideration. International law gives rise to divergences that respect the rulings of the other tribunals as an element that destabilizes the international order and as a trend that must be acknowledged (Koskenniemi, 2007).

We ultimately take into consideration the declaration on the respect and promotion of international law which is taken among the principles of the UN where the Council of the EU was the promoter of the strong support of the EU towards the streets of the Hague, where the ICJ underlines the obligation of all Member States to respect the rulings of the Court²³. The continuous and incalculable commitment over time of the EU and its Member States towards an international order based on the rule of law is now a reality²⁴. Because the European Council

²³Council of the EU, Declaration of the European Union and its Member States on upholding and promoting respect for international law, including the principles of the Charter of the United Nations, 10470/22, Brussels, 20 June 2022, par. 5. <https://data.consilium.europa.eu/doc/document/ST-10470-2022-INIT/en/pdf>. See also in argument the Council conclusions of 20 February 2023: <https://www.consilium.europa.eu/en/press/press-releases/2023/02/20/council-conclusions-on-eu-priorities-in-un-human-rights-fora-2023/>

²⁴“(...) unwavering commitment to international law, the United Nations Charter and a rules-based international order” (ibidem, par. 1).

affirms the need as we have seen:

“(...) to comply with the decisions of the ICJ, in this sense addressing, in particular, the Russian Federation, on the occasion of the summit of 24 and 25 March 2022, at which they took aside from US Presidents Biden and Ukrainian President Zelensky (...)”²⁵.

Positions of the same nature that we have seen in the diplomatic bodies of the Union, such as for example the delegation of the EU to the UN²⁶; following with the High Representative the advisory opinion of the ICJ on the unilateral position of independence from Serbia by Kosovo²⁷.

Participation of the EU according to the statute of the ICJ

The intervention of third parties incidentally to the proceedings of the ICJ is a reality foreseen by the statute of the ICJ itself according to Articles 62 and 63 (Liakopoulos, 2019; Zimmermann, Tams, Oellers-Frahm, 2019). The first way of intervention foresees the possibility of a request for intervention by the state which has and must show an interest and of a legal

²⁵European Council of 24 and 25 March 2022, Conclusions, EUCO 1/22, Brussels, 25 March 2022, par. 2. <https://data.consilium.europa.eu/doc/document/ST-1-2022-INIT/en/pdf>

²⁶EU Statement-UN General Assembly 6th Committee: Report of the International Court of Justice, Statement on behalf of the European Union by Mr. Frank Hoffmeister, Head of the Legal Department of the European External Action Service, at the 77th Session of the United Nations General Assembly on the Agenda item 70: Report of the International Court of Justice, New York, 27 October 2022 which is affirmed that: “(...) essential component of a rules-based international order (...)”.

²⁷Declaration by High Representative Catherine Ashton on behalf of the European Union on the ICJ advisory opinion, 12516/10, Brussels, 22 July 2010: https://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/foraff/115902.pdf

nature that perhaps will be involved in part by its own final sentence (Miller, 1976; Rosenne, 1983; Jessup, 1981; Chinkin, 1986; Uchkunova, 2014; Bronckers, 2007; Wojcikiewicz Almeida, 2019a; Wojcikiewicz Almeida, 2019b; Rosas, 2020; Barrie, 2020; Alexander, Kumar Guha, 2021; McGarry, 2023). In reality it is not an intervention but a general hypothesis that allows the participation of the state in a facultative way which subordinates it to a position where the requirements are broad and generic and the court “shall” decide “upon this request”, par. 2 (Bonafè, 2012).

A second path of intervention is envisaged in the litigation phase and when they are part of a multilateral treaty and which will be interpreted according to the same final ruling of the Court. The need to demonstrate between the link of the intervention to a legal interest is linked to a precise position where the state respects the controversy and which is part of the case. The intervention of ex Art. 63 is connected to a general interest of interpretation where the treaty instrument by the court is general and explains the relative interpretation that is provided by the ICJ and which appropriately constitutes the influence and conduct towards the attitude of the states which are part of the same convention. This is a customary intervention which is not linked to the consultative competence of the ICJ but has a more frequent nature especially in disputes relating to territorial and

maritime delimitations (Xu, 2019). The unfinished interventions include various reasons such as the generic requirements that are foreseen by the Statute, such as the restrictive attitude of the ICJ under examination (Uchkunova, 2014; Aughey, Sander, 2022). Following with factors of an extra-legal nature as for example in the case of governments incurring expenses for actions that are not successful (Alexander, Kumar Guha, 2021), and/or of a diplomatic-political nature for the states that remain as spectators to a certain controversy that through the intervention the real reasons not only for intervention but also for the related dispute are seen (Miron, Chinkin, 2019).

In recent years the intervention has noticed a much more frequent path as can also be seen in the Gambia and Myanmar case and/or between Ukraine and Russia, both based and discussed in relation to the Convention on the prevention and repression of the crime of genocide (Le Floch, 2018; Islam, Muquim, 2020; Kirby, Hodgson, 2022)²⁸. Such cases of intervention involve first of all the general interest and erga omnes obligations (Gaja, 2010; Gaja, 2011). As a phenomenon where the interest of the intervention concerns international organisations, also including the EU within the context of the statute of the ICJ and its own procedural regulation which allows the involvement of each organization in a pending

²⁸ICJ, Application of the Convention on the prevention and punishment of the crime of genocide (The Gambia v. Myanmar), order of 22 July 2022, par. 41.

proceeding. Let's remember Art. 43, par. 2 of the regulation of procedures where the interpretation of the convention for an international organization is part of a discussion in a case before the ICJ after the relevant invitation of the organization to make relevant observations regarding the convention (Liakopoulos, 2019).

Art. 66, par. 2 of the ICJ statute is also noted (Liakopoulos, 2019) where it is foreseen the possible involvement of the international organization within the context of the consultative competence of the ICJ. This mechanism according to the ICJ considers the information that is collected in a written or oral manner by the international organizations. In this spirit we recall the intervention relating to the consultative opinion taken in 2004 by the ICJ regarding the consequences of the construction of a wall in the occupied Palestinian territories during a dispute where the ICJ actually invited more than 45 states, international organizations such as the UN, the Arab League and the Organization of Islamic Cooperation²⁹. In particular on the dispute between the Israelis and Palestinians which reopened on 30 December 2022, the General Assembly of the UN with the relevant Resolution 77/247 asked from the ICJ for a related advisory opinion for Israeli practices which aim to provoke

²⁹ICJ, Legal consequences of building a wall in the occupied Palestinian territories, ICJ Reports of 9 July 2004, par. 108. See also the Statement of Ireland on behalf of the European Union, 30 January 2004.

damage to the sphere of human rights and to the Palestinian people of the occupied territories, including East Jerusalem (Power, 2022; Ronen, 2023)³⁰. The relevant procedure saw that the intervention of some international organizations such as the Arab League was based on the former Art. 66 of the statute³¹, as also in the case of the Organization of Islamic Cooperation³² and the African Union³³. Also in this case the EU was not officially called for an intervention as we saw in 2004 but we are sure that it will happen voluntarily given the interests in the area³⁴, as we have also noticed through the related pressures of the European Parliament³⁵ and the related positions of the High

30UN General Assembly, Israeli practices affecting the human rights of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem, resolution adopted on 30 December 2022, UN Doc. A/RES/77/247. <https://digitallibrary.un.org/record/3993908?ln=en>

31Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem (Request for Advisory Opinion), The Court authorizes the League of Arab States to participate in the proceedings, Press Release No. 2023/12 10 March 2023: <https://www.icj-cij.org/case/186>

32Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem (Request for Advisory Opinion), The Court authorizes the Organisation of Islamic Cooperation to participate in the proceedings, Press Release No. 2023/16, 31 March 2023: <https://www.icj-cij.org/case/186>

33Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem (Request for Advisory Opinion), The Court authorizes the African Union to participate in the proceedings, Press Release No. 2023/19, 13 April 2023: <https://www.icj-cij.org/case/186>

34The ICJ officially requested on 25 July 2023 to receive information, written declaration regarding the matter which was submitted by the General Assembly of the UN according to the related ordinance which was adopted by the ICJ on 3 February 2023 entitled: Legal consequences of policies and of Israeli practices in the occupied Palestinian territories, including East Jerusalem, request for an advisory opinion, para. 2).

35Commission participation in the ICJ advisory opinion on the legal status of Israel's occupation and its consequences of 17 February 2023.

Representative.

A final avenue of intervention is foreseen through Art. 34, par. 2 of the Statute of the ICJ (Liakopoulos, 2019) which allows the related information coming from the outside to be litigated. On the one hand, the ICJ asks international organizations for relevant information for the ongoing dispute and on the other hand it can receive information directly from international organizations according to its own initiative of a mainly political nature. All that in combination with Art. 69, par. 2 of the regulation of the ICJ which outlines the intervention practices through modalities of the international organisations, information which offers written briefs to the litigation in the ICJ before the written phase of the proceedings³⁶. This type of proceeding allows the ICJ to receive: “information relevant to cases before it” as a type of participation that has been used by the EU to intervene in the disputes we noted in the Ukraine v. Russia case. And how does this intervention work?

https://www.europarl.europa.eu/doceo/document/E-9-2023-000512_EN.html

³⁶According to Art. 69, par. 2 of the rules of procedure, when the information is received from an international organization, the ICJ has the faculty, the right to also request the relative additions, declarations or clarifications relating to the case in question as well as to formulate the relative questions. Thus it can also authorize the parties to the dispute to bring comments and related information regarding the case.

The ICJ as a guide to the development of global justice

The process of institutionalization of international legislation has considered a role to be played by a legal system that lacks a body with a law-making function. Customary rules (Happold, 2012) carry out the typical nature of a judicial body within a circle of activity and protection of rights. The application and existence of the application of “an innovative, developmental way” (Mac Whinney, 2006) is a path where the rules in formation guide and contribute to the development of international law as happens in the sector of the law of the sea and where the ICJ itself took a position and gave an important “substantial contribution” (Magnùsson, 2015; Cottier, 2015; Mossop, 2016; Chan, 2018)³⁷. The exercise of consultative activity goes outside the jurisdictional protection of the interest where each individual state responds to an interest that is collective for the ascertainment first of all of the law and then of the applicable norm and to the categories where the ICJ is invited to proclaim according to general principles and carrying out a function that we can call quasi-legislative (Mac Whinney, 1996).

The ICJ in its jurisprudential history has produced a certain legal

³⁷Delimitation of the maritime boundary in the Gulf of Maine area, Canada v. United States of America, ICJ Reports, 1984, par. 83. In the same orientation of the ICJ see: Somalia v. Kenya, Judgement on Preliminary Objections (2 February 2017) parr. 18.19. See the Court’s judgement in Nicaragua v. Colombia: “(...) the role of the CLCS relates only to the delineation of the outer limits of the continental shelf, and not delimitation” (Judgement on Preliminary Objections, 17 March 2016, par. 110).

primacy regarding the material content of international customs and general principles (Alvarez-Jimenez, 2011). The elements of custom and the legal value of codification, the law of treaties (Dekker, Werner, 2014; Oude Elferink, 2014; Kaczorowska-Ireland, 2015; Buga, 2018)³⁸ and the law of treaties are elements that have to do with the right to use force, intervention in a third country, armed aggression, legitimate defense³⁹, countermeasures (Dawidowicz, 2017)⁴⁰, genocide (Quigley, 2008-2009; Gillich, 2016)⁴¹; the principles of diplomatic and consular law⁴² the personal immunities and inviolability of representatives of states and agents of the UN⁴³; the principles of *uti possidetis juris* (Eckart, 2012; Ziccardi Capaldo, 2016)⁴⁴, of

38ICJ, North sea continental shelf (Denmark v. Federal Republic of Germany), ICJ Reports of 20 February 1969, par. 88. Military and paramilitary activities, in ICJ Reports, 1984, par. 184, 186, 207.

39ICJ, Case concerning armed activities on territory of the Congo (Democratic Republic of the Congo v. Uganda), ICJ Reports, 19 December 2005, par. 148-153 and the Netherlands.

40ICJ, Military and paramilitary activities in and against Nicaragua (Nicaragua v. United States of America), merits, judgment, in ICJ Reports 1986, op. 32, par. 188-211.

41ICJ, Application of the convention on the prevention and punishment of the crime of genocide, (Bosnia and Herzegovina v. Yugoslavia), in ICJ Reports, provisional measure, order, 1993 of 13 September 1993, par. 34. Case concerning the application of the convention on the prevention and punishment of the crime of genocide (Bosnia and Herzegovina v. Serbia and Montenegro), ICJ Reports, of 26 February 2007. Case concerning the application of the convention on the prevention and punishment of the crime of genocide (Croatia v. Serbia), ICJ Reports 18 November 2008.

42ICJ, United States diplomatic and consular staff in Tehran (United States v. Iran), ICJ Reports of 24 May 1980, par. 86. Case concerning Ahmadou Sadou Diallo (Republic of Guinea v. Democratic Republic of Congo), ICJ Reports, of 24 May 2007.

43Difference relating to immunity from legal process of a special rapporteur of the commission on human rights, advisory opinion, 1999, ICJ Reports of 29 April 1999, par. 62.

44Frontier dispute (Burkina Faso v. Republic of Mali), in ICJ Reports, 22

self-determination (Bianchi, 2017; Snoxell, 2018)⁴⁵ and of international humanitarian law (Lucak, 2012)⁴⁶; the category of erga omnes obligations (Bruke, 2011; Allen, 2014; Yee, 2017; Bhatt, 2018; Law, 2018; Pigrau Solè, 2018; Liakopoulos, 2019; Loger, 2022)⁴⁷ and the consequences that derive from its violation for the responsible states and for other states. The ICJ developed equity as a legal notion⁴⁸ and enunciated some general principles and customs of the law of the sea and incorporated them into the UN Convention on the Law of the Sea of 1982. The fundamental character of the principle where maritime delimitation

December 1986, parr. 23-26. Territorial and maritime dispute in the Caribbean sea (Nicaragua v. Honduras), ICJ Reports, 2001, 6 March 2001, par. 43.

⁴⁵Legal consequences for states of the continental presence of South Africa in Namibia (South West Africa) notwithstanding Security Council resolution 276 (1970), advisory opinion, ICJ Reports, 1971, of 21 June 1971, par. 52. East Timor (Portugal v. Australia), in ICJ Reports of 30 June 1995, par. 29. See also Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965 (ICJ, Request for an Advisory Opinion) Written Statement of the African Union (1 March 2018) paras 69, 217; Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965 (ICJ, Request for an Advisory Opinion), Written Statement submitted by the Government of the Republic of South Africa (1 March 2018) parr. 6, 60, 63, 88. According to Bianchi: "(...) the ICJ created a strong feeling that "nuclear disarmament should be reserved to the political arena and not addressed by the Court for judicial determination", contributing to the "progressive disempowerment of international law (...)".

⁴⁶Legality of the threat or use of nuclear weapons, advisory opinion 1996-I, in ICJ Reports of 8 July 1996, par. 26. Application of the international convention on the elimination of all forms of racial discrimination (Georgia v. Russian Federation), request for the indication of provisional measures, order of 15 October 2008.

⁴⁷ICJ, Barcelona traction, light and power company limited (Belgium v. Spain), in ICJ Reports of 5 February 1970, parr. 33-34.

⁴⁸ICJ, North sea continental shelf, op. cit., par. 88. Continental shelf (Tunisia v. Libyan Arab Jamahiriya), Tunisia v. Libyan Arab Jamahiriya, in ICJ Reports of 24 February 1982, par. 71. Frontier dispute (Burkina Faso v. Republic of Mali), op. cit., par. 28.

“must be based on the application of equitable criteria” (Kaye, 2016; Proelss, 2017)⁴⁹, the ICJ itself recalled that this principle is constantly affirmed in its judicature and has consecrated the proceedings of the third conference on the law of the sea.

The systematic nature of the work of the ICJ and above all in the sector of codification conventions highlights the principles and general rules that regulate the various sectors of law and reconstructs the law of treaties and affirms the general character of the provisions of the VCLT⁵⁰ declaring the customary rules, as well as the Vienna Conventions of 1961 and 1963 on diplomatic and consular immunities. Even the denial of the general nature of these conventions in the relevant sentence states that “in codifying conventions that principles and rules of general application can be identified”⁵¹. One's expertise in the matter paves the way for a legitimacy check regarding the decisions of the Security Council which works as with

⁴⁹ICJ, Delimitation of the maritime boundary in the Gulf of Maine area, op. cit., par. 113.

⁵⁰Arbitral award of 31 July 1989, par. 48.

⁵¹Delimitation of the maritime boundary in the Gulf of Maine area, op. cit., par. 83. In particular to the reference to the United Nations Convention on the Law of the Sea of 1982, the ICJ was particularly incisive in stating that: “(...) although the convention had not been established in force (...) some of its provisions constitute the expression of customary international law in the matter”. Similar in the case of maritime delimitation between Qatar and Bahrain in delimiting the territorial area in the regional sector and having to draw its own conclusions on customary law, the ICJ has applied the names contained in the Convention on the law of the sea which has been considered customary in particular by art. 15 (delimitation of the territorial sea between states with opposite or adjacent coasts) and art. 21 (legal regime of the islands). See delimitation and territorial issue between Qatar and Bahrain (Qatar v. Bahrain), op. cit., parr. 185, 195.

jurisdictional functions of approval or disapproval.

The ICJ's approach of universality balances interests that protect international criminal law in our global community. The interest in an impartial trial guarantees the internationalization of the jurisdictional means of guaranteeing human rights as well as a general interest in the repression of international crimes and the proper punishment of those responsible. Within this context the ICJ safeguards the impartiality of criminal proceedings in relation to the responsibility of international crimes and concerns the instrumental use of national jurisdiction of an extraterritorial nature and also exercises at state levels of service. The exercise of criminal jurisdiction by its international tribunals is now impartial and the approach of the ICJ is of uncertain functioning of international criminal institutions as a solution that is chosen and which results in hindering the activity of the international tribunals themselves as well as the goal of punishing the guilty, serious violations of human rights. The ICJ follows a global trend that replaces the structure of the international legal system and the system of the Charter of the UN, incapable of facing the pressures and provocations of emerging global values. These trends respond to the reorganization of international power in a centralized way, thus ensuring international legality by guiding the interpretation and development of international law as well as the verification and

respect of global constitutional principles by internal and international bodies. The ICJ as a global court is committed to determining the jurisdictional protection of human rights relating to the maintenance of peace by simultaneously affirming the power and jurisdictional control of the peace and the power of control over the political bodies of the UN as guardians of the fundamental principles of a nascent international community and full of provocations. Its contribution requires change in the international community, aiming to strengthen the verticalisation of both a normative and functional nature of the international legal system.

The ICJ is the global leader in consolidating the authorities of state bodies of international institutions where the jurisdiction to examine compliance with international law before domestic bodies directs some ad hoc decisions. The relevant rulings, especially the provisional measures, oblige the parties in conflict to take armed action to comply with international law and obligations deriving from the Charter of the UN, ensuring respect for human rights and humanitarian law. Even the lack of specific measures for disputes that violate international law affects internal bodies and engages the international responsibility of the states themselves.

The continuous work of the ICJ in relation to the drafting of the bodies of the UN provides a solid basis for the legitimization of

world government and has clarified the current transition phase of a power at the global level which appears to be fragmented between states where decision-making power is centralized in international bodies. We are living in the moment where the General Assembly expands its regulatory and sanctioning powers to sectors that concern interests that are based on the global community and the Security Council acts as guarantor of the same. Multi-discussed bodies influence states on a daily basis by weighing in a specific way on some which are represented as secondary. This change *mutatis mutandis* takes place at the legitimization of global governance where the meaning especially in constitutional monarchies is controlled partly by the courts based on legislation and on an administrative system as branches of a government in which the leader is dominated under the influence of the monarch (Kelsen, 2009).

EU as a “witness” in the dispute/war between Ukraine and Russia

Returning once again to the dispute between Ukraine and Russia, the ICJ highlights the institution of the intervention in question. This is a participation of many states that will try to contribute more not so much legal but political attention to an

issue that still involves many victims on both sides and puts the ICJ to decide and provide clarifications on the functioning of the institution of intervention in question (Alexander, 2022; Khubchandani, 2022; McIntyre, 2022). What interests us from the dispute that began on 26 February 2022 is the Convention for the prevention and repression of genocide (Milanovic, 2022)⁵², and how this convention was exploited by Russia leading to a military invasion that we still see results for the destruction of human rights and the lives of human beings (Hill, 2022).

The appeal was also based on precautionary measures of the ex Art. 41 of the ICJ Statute where the ICJ ordered Russia:

“(...) halt all military actions in Ukraine pending the holding of a hearing (...)”, especially after the relevant hearings of 7 and 8 March 2022 (at which Russia did not participate (Mègret, 2022)) and where on 16 March 2022 the Court accepted the related precautionary request with 13 votes in favor and 2 against and ordered the defendant state to,

“(...) suspend the military operation that it commenced on 24 February 2022 in the territory of Ukraine (...)” (Mègret, 2022).

On 20 May 2022, a joint statement was released together with 41 states taking a position on the related ongoing litigation

⁵²ICJ, Application instituting proceedings filed in the Registry of the Court on 26 February 2022, Allegations of genocide under the Convention on the prevention and punishment of the crime of genocide (Ukraine v. Russian Federation): <https://www.icj-cij.org/case/182/institution-proceedings>

which heralded an intervention in the case (Mcgarry, 2022)⁵³, stating that:

“(...) our support for Ukraine's application instituting proceedings against the Russian Federation before the International Court of Justice (...) to intervene in these proceedings”,
in order to

“share with the International Court of Justice their interpretation of some of its essential provisions (...)”.

As we have noted up to now, the statute does not indicate the form of intervention in question from a legal-procedural point of view and no provision is mentioned that specifies it within the statute. There is only the intention to intervene which does not bind the declaring states to “officialise” their entry into the dispute⁵⁴. The European Union participates as an intervention of all the states it represents according to the ex Art. 63 of the ICJ statute as is also foreseen for Japan, Marshall Islands and Micronesia which have signed the relevant declaration, given that they are part of the convention on genocide and the related dispute which is part of it is the topic under examination⁵⁵. Of

⁵³Joint statement on Ukraine's application against Russia at the International Court of Justice, 2 May 2022. Joint statement on supporting Ukraine in its proceeding at the International Court of Justice, Statement/22/4509, Brussels, 13 July 2022: https://ec.europa.eu/commission/presscorner/detail/en/statement_22_4509

⁵⁴Joint statement of Canada and the Kingdom of the Netherlands regarding intention to intervene in The Gambia v. Myanmar case at the International Court of Justice, Diplomatic statement, 2 September 2020: <https://www.government.nl/documents/diplomatic-statements/2020/09/02/joint-statement-of-canada-and-the-kingdom-of-the-netherlands-regarding-intention-to-intervene-in-the-gambia-v.-myanmar-case-at-the-international-court-of-justice>

⁵⁵Given that the relative appeal refers to the convention on genocide, the three states cannot intervene according to the art. 63 StICC since it is requested that this title can be used as a legitimacy for the intervention and the intervening state cannot participate in the multilateral convention because the question is not only of an interpretative nature but also as the main cause of the case in question.

course, the political and diplomatic character is evident given that the declaration has as its final aim the support and solidarity first of all towards the people of Ukraine and on the other hand we can see the pressure towards the ICJ according to the decision of the relevant dispute. Already the language and terminology used brilliantly show the relative support as every democratic state that believes in international justice must show to its people who are in the stage of war. The means for the “unprovoked and brutal invasion of Ukraine” are condemned⁵⁶. There are many declarations and they reaffirm the coordination of the EU as we saw in August 2022 within the Security Council of the UN⁵⁷. A declaration in the name and on behalf of all the Member States of the EU including also from a political point of view the solidarity of the countries that are candidates for membership in the salon of the EU⁵⁸. The statement by the EU and of 41 countries was intended as an action that attempts to politically press the ICJ and to highlight the seriousness of the situation in the international scene especially at a difficult time

⁵⁶Joint statement on supporting Ukraine in its proceeding at the International Court of Justice, op. cit.

⁵⁷EU Statement-UN Security Council: Briefing on Ukraine, Statement by H.E. Mr. Silvio Gonzato, Chargé d'affaires a.i., Delegation of the European Union to the United Nations on behalf of the European Union and its Member States, at the UN Security Council Briefing on Ukraine, New York, 24 August 2022: https://www.eeas.europa.eu/delegations/un-new-york/eu-statement-%E2%80%93-un-security-council-briefing-ukraine-0_en?s=63

⁵⁸We are referring to candidate countries such as for example North Macedonia, Montenegro, Albania and Moldova (and the absence of Serbia) as well as candidate countries such as Bosnia and future countries such as Georgia, Andorra and San Marino.

given that the whole world has just emerged from a pandemic and the international rules have been underlined above all that of solidarity in a dispute which makes the judges of the ICJ even more responsible to take a position which will certainly remain without anything else in the history of the ICJ. What interests us most was the full acceptance of the jurisdiction of the ICJ allowing in this regard that:

“(...) strongly believe that this is a matter that is rightfully brought to the ICJ, so that it can provide judgment on Russia's allegations of genocide (...)” (Mcgarry, 2022)⁵⁹.

One country after another comes to take positions and declarations at the ICJ. Starting with Latvia which filed on 21 July 2022 based on Art. 63 of the Statute ICJ⁶⁰; Lithuania⁶¹, New Zealand and the United Kingdom⁶², statements which note jurisdictional and substantive arguments for the ICJ (Mcintyre,

⁵⁹Joint statement on supporting Ukraine in its proceeding at the International Court of Justice, op. cit. (ICJ, order of 23 March 2022, Allegations of genocide under the Convention on the prevention and punishment of the crime of genocide (Ukraine v. Russian Federation)).
<https://www.icj-cij.org/sites/default/files/case-related/182/182-20220323-ORD-01-00-EN.pdf>

⁶⁰Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation), Declaration of intervention of Latvia, 21 July 2022: <https://www.icj-cij.org/sites/default/files/case-related/182/182-20220719-WRI-01-00-EN.pdf>

⁶¹Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation), Declaration of intervention of Lithuania, 22 July 2022: <https://www.icj-cij.org/sites/default/files/case-related/182/182-20220719-WRI-02-00-EN.pdf>

⁶²Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation), Declaration of intervention of New Zealand, 28 July 2022; Declaration of intervention of the United Kingdom, 5 August 2022.
<https://www.icj-cij.org/sites/default/files/case-related/182/182-20220805-WRI-01-00-EN.pdf>

Pomson, Wigard, 2022). As regards the Convention, it prevented the making of “abusive allegations of genocide”⁶³ and as an objective opened up unilateral recourse to the use of force to prevent, punish and respect the commission of acts of genocide. A few weeks later from the first intervention of Latvia, 13 states are still visible, which are part of the EU⁶⁴, as well as the United States and Australia⁶⁵. The circle concluded at the end of 2022 with 16 further interventions⁶⁶. The Netherlands, among the founding countries to intervene together with Canada, has deposited a Declaration⁶⁷, as the only intervention pursuant to Art. 63 of the statute of the ICJ regarding the admissibility which is not in doubt (Khubchandani, 2022)⁶⁸.

The EU was based on Art. 34, par. 2 of the Statute ICJ (Liakopoulos, 2019; Zimmermann, Tams, Oellers-Frahm,

⁶³Declaration of intervention of Latvia, op. cit., p. 13, par. 45 ss.

⁶⁴Declaration of intervention of Italy, 15 September 2022, par. 42 ss: “(...) to prevent and to punish acts of genocide (...)”.

⁶⁵Among the first countries to intervene was Germany (September 5, 2022) and then chronologically followed by: United States (September 7), Sweden (September 9), France and Romania (September 13), Italy and Poland (September 15), Denmark (September 16), Ireland (September 19), Finland (September 21), Estonia (September 22), Spain (September 29), Australia (September 30).

⁶⁶We are referring to the five interventions during the month of October from the following countries: Portugal, Austria, Luxembourg, Greece, Croatia; after four in November (Czech Republic, Bulgaria, Malta, Norway) and finally seven in December (Belgium, Canada and the Netherlands, Slovakia, Slovenia, Cyprus, Liechtenstein).

⁶⁷Joint declaration of intervention of Canada and the Netherlands, 7 December 2022, which is affirmed that: “(...) by this Joint Declaration, Canada and the Netherlands accordingly avail themselves of the right to intervene in the dispute (...) given their common interest in the accomplishment of the high purposes of the [Genocide] Convention (...)” (par. 9 and 12).

⁶⁸Is affirmed that: “(...) has the right to intervene in the proceedings”, there do not seem to be specific obstacles, in other provisions of the Statute, to a joint initiative by two (or more) states.

2019) as an international organization that has provided information that is relevant to the case at hand. The relative formal involvement of the litigation of the EU is very important which in reality for the first time has shown as an iron fist the relative mechanism for the procedure foreseen by the ICJ for the support of the Ukraine⁶⁹, opening also the way for the next, future interventions at the ICJ that we will certainly see in the coming years.

“Information” deposited from the EU

The written statement of the EU announced the day before on 18 August 2022 highlighted the clear and political position for the dispute between Ukraine and Russia⁷⁰. This is a memory that has not seen the light of social media, as well as the related content that we can imagine as well as the institutions involved. The press release before the declaration stated that the amicus curiae was made and based on Art. 34, par. 2 of the ICJ Statute according to the initiative of the EU thus also leaving issues of

⁶⁹Joint statement on supporting Ukraine in its proceeding at the International Court of Justice, op. cit. “(...) explore all options to support Ukraine in its efforts before the ICJ and to consider a possible intervention in these proceedings (...)”.

⁷⁰ICJ, Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation), Information furnished by the European Union under Article 34, paragraph 2, of the Statute of the Court and Article 69, paragraph 2, of the Rules of Court, Press Release No. 2022/29, 18 August 2022: <https://www.icj-cij.org/sites/default/files/case-related/182/182-20220818-PRE-01-00-EN.pdf>

doubt regarding the content and questions about the general action given that the ICJ accepts the relevant intervention from an international organization (Melzer, 2022).

The reference to Art. 34 of the ICJ Statute (Zimmermann, Tams, Oellers-Frahm, 2019) is not fully clear given that we can doubt the objective and neutral character of the concept of observation and how it is foreseen by the rules of the procedure of the ICJ itself given that the relative possibility of providing the relative positions of arguments is implied in a certain sense (Wiik, 2018). The EU is not a state like all the others that participate and is not part of the convention on genocide therefore according to international law its intervention is part of *amicus curiae* in the contents which are also illustrated in an impartial manner and without inadmissibility. The EU has initiated some specific actions to support the Ukrainian authorities in investigative operations. We already remember the European Union Advisory Mission (EUAM) Ukraine project which deals with technical support such as type of IT equipment, technological tools for forensic investigations, training for regional law enforcement agencies and any other means necessary to guarantee “the investigation and documentation of international crimes”⁷¹. Thus the relevant information is

⁷¹EUROPEAN EXTERNAL ACTION SERVICE (EEAS), EUAM Ukraine launches pilot project to support policing and community safety in Izyum, News, 26 April 2023: <https://www.euam-ukraine.eu/news/euam-ukraine-launches-pilot-project-to-support-policing-and-community-safety-in-izyum/>

integrated by the EU and according to ex Art. 34 of the ICJ Statute. Other evidentiary material is introduced in a supplementary manner through the work carried out by Eurojust for the war in Ukraine. The lack of a concrete and precise institution of the EU as a signatory body of the EU allows us to speak of the lack of authorship of the declaration as we also note the related constitutional problem for the external representation of the EU (Hoffmeister, 2017; Wouters, Hoffmeister, De Baere, Ramopoulos, 2021).

The use of the role as *amicus curiae* of the EU in various international forums is a reality of an international nature (Hoffmeister, Ondrusek, 2008; Hoffmeister, 2017). We must say that it is Art. 335 TFEU (Blanke, Mangiamelli, 2021) which regularizes that everything can be done through the work of the European Commission, where the ability to take legal action has an extensive phase and nature by analogy also to courts of non-European countries and to international tribunals as also provided for by the CJEU⁷² itself. The European Commission has also intervened before the United States Supreme Court regarding competition in the internal market (Hoffmeister, 2010; Hoffmeister, 2017; Liakopoulos, 2020). Art. 335 TFEU also includes the sector of the common foreign and security policy of

⁷²CJEU, C-131/03 P, Reynolds Tobacco and others v. Commission of 12 September 2006, ECLI:EU:C:2006:541, I-07795, par. 94. C-73/14, Council of the EU v. European Commission of 6 October 2015, ECLI:EU:C:2015:663, published in the electronic Reports of the cases, parr. 58-59.

the EU as well as the competences that are included in the external representation of the European Commission according to Art. 17, par. 1 TEU (Blanke, Mangiamelli, 2021). The jurisprudence of the CJEU has placed some limits on the ability of the European Commission to take legal action given that it does not only operate within foreign and defense policy. Thus the filed declaration perhaps extended the ability of the European Commission to litigate before the ICJ in the case at hand (Melzer, 2022)⁷³.

Within this context we can also take into consideration Art. 27, par. 2 TEU which also allows the High Representative to take positions on common foreign and security policy policies. It would be appropriate to say that in the case in question the High Representative is more inclined to have written and taken a position from the European Commission itself. Also because we can notice that Art. 24, par. 1 TEU which refers to the competence in the matter of the CFSP relates to common security situations making it necessary to the Security Council of the UN in August of 2022 that the Russian attitude was a total destruction of peace and a threat towards the European security given that the borders with Ukraine are also borders of countries that are part of the EU and as fear that the situation will lead to

⁷³Melzer in his article proposed to read together with the art. 335 TFEU also the par. 17, par. 1 TEU thus to exclude that the European Commission can take action and to stand trial for related disputes that have to do with the CFSP.

the threat of a nuclear calamity for the whole of Europe⁷⁴. It is true that the dispute before the ICJ is part of the matter of the ICJ and constitutes that the High Representative represents for the Union the basis for a relevant judgment before an international court such as the ICJ. Even if this were the case the High Representative within the policy of foreign and defense policy is part of the work that has been organized by the Council according to Art. 18, par. 2 TEU and needs an institution that must play a role that has a decision-making nature for the matter according to Art. 26, par. 2 TEU.

In finis, we are of the opinion that the lack of the signature or body representing the brief filed with the registry of the ICJ shows that a party has presented itself according to ex Art. 34, par. 2 of the Statute of the ICJ (Zimmermann, Tams, Oellers-Frahm, 2019). It is the superior commitment of the EU to respond and take a position that was perhaps a demonstration of the political value it wanted to give and a representation that comes with implicit way certainly in the field of foreign and defense policy. First of all, however, it is underlined that the political solidarity towards Ukraine was listened to with great interest by the judges of the Hague, as a precedent that opened the way for the coming years to controversies at international

⁷⁴EU Statement-UN Security Council: Briefing on Ukraine, op. cit. See also the Council Decision (CFSP) 2022/395 of 9 March 2022 amending Decision 2014/512/CFSP concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine, ST/6971/2022/INIT, OJ L 81, 9.3.2022, p. 8-11.

forums such as the ICJ and as a development factor for the competences and attributions not only of the ICJ but also in the work of the EU (Kaddous, 2008; Müller-Bradebeck-Bocquet, Rüger, 2013).

Between European Union and international Criminal Court

The establishment of the ICC was an international celebration even for those who did not believe in international justice and its creation was an international forum for the punishment of international crimes (Antoniadis, Bekou, 2007; Groenleer, Van Schaik, 2007; Klip, 2021). The EU was also a participant, as expected, despite not being part of the system but supporting and trying to promote its own development. As far back as 2001, the Council adopted the common position relating to the ICC⁷⁵, then modified in 2003⁷⁶ and was linked to an Action Plan in 2004⁷⁷. The Common Position stated that:

⁷⁵Council Implementing Regulation (EU) No 443/2011 of 5 May 2011 extending the definitive countervailing duty imposed by Regulation (EC) No 598/2009 on imports of biodiesel originating in the United States of America to imports of biodiesel consigned from Canada, whether declared as originating in Canada or not, and extending the definitive countervailing duty imposed by Regulation (EC) No 598/2009 to imports of biodiesel in a blend containing by weight 20 % or less of biodiesel originating in the United States of America, and terminating the investigation in respect of imports consigned from Singapore, OJ L 122, 11.5.2011, p. 1-11.

⁷⁶Council Common Position 2003/444/CFSP of 16 June 2003 on the International Criminal Court, OJ L 150, 18.6.2003, p. 67-69.

⁷⁷Council of the EU, Action Plan to follow-up on the Common Position on the International Criminal Court, 5742/04, 28 January 2004: <https://data.consilium.europa.eu/doc/document/ST%205742%202004%20INIT/EN/>

“(...) the principles of the Rome Statute of the International Criminal Court and those that regulate its functioning are perfectly in line with the principles and objectives of the Union (recital no. 4), outlines the methods to support the Court's activity, in particular with a view to promoting the widest possible participation in its Statute (...) the Union implements various forms of support, of a political-diplomatic as well as of technical-financial nature, especially in relations with third countries (...) being aimed at supporting the effective commissioning of the Court, which took place in 2003, with the establishment of its various bodies in the Hague. To this end, it provides for various coordination actions between Member States, such as the creation of national contact points, the periodic exchange of information, the monitoring of selection procedures for judges and staff members of the Court, as well as the timely payment and complete with quotas for its budget (...)”⁷⁸.

The EU continued in 2006 a collaboration and assistance agreement with the ICC to promote the relevant principles and values of the statute of the ICC⁷⁹. Through this agreement the EU recalled Art. 87, par. 6 StICC (Ambos, 2022) which allows the ICC to collaborate with international organizations with the aim of exchanging information and data and putting into practice “other forms of cooperation and assistance”⁸⁰. We are talking about coordinated actions that fall within the scope of exchange of information and documentation (art. 7), the related management of sensitive data for security (arts. 8-9), testimonies coming from agents of the EU (art. 10), its collaboration with the Prosecutor of the ICC (art. 11) also including the services

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⁷⁸Council Common Position 2003/444/CFSP of 16 June 2003 on the International Criminal Court, op. cit., par. 2. Council of the EU, The European Union and the International Criminal Court, Brussels, November 2007, pp. 13-14.

⁷⁹Agreement between the International Criminal Court and the European Union on cooperation and assistance, ICC-PRES/01-01-06 10 April 2006. https://www.icc-cpi.int/sites/default/files/NR/rdonlyres/6EB80CC1-D717-4284-9B5C-03CA028E155B/140157/ICCPRES010106_English.pdf

⁸⁰See from the Preamble, artt. 1 and 2, lett. 9.

and structures in its field (art. 14). This type of welfare aid from the Union has materialized as we have seen in the case of the Democratic Republic of the Congo and in Darfur, the satellite center of the EU which provided the Prosecutor with the relevant images, photographic satellite system, reports and data which are drawn up on positions that are requested by the Office of the prosecutor of the ICC⁸¹.

In 2011 a new decision from the Council accompanies the further action plan⁸² as a support aid on the activities and work of the ICC by strengthening the work of the High Representative and the external action service after its establishment of the Treaty of Lisbon⁸³.

The main directives are focused on the promotion and participation at a global level of the effectiveness and implementation of the StICC (art. 2), the independence (art. 3) and the functioning of the ICC itself (arts. 4-5) (Ambos, 2022).

⁸¹Council of the European Union, The European Union and the International Criminal Court, Brussels, February 2008, p. 23.

⁸²Council Decision 2011/168/CFSP of 21 March 2011 on the International Criminal Court and repealing Common Position 2003/444/CFSP, OJ L 76, 22.3.2011, p. 56-58. Council of the EU, Action Plan to follow-up on the Decision on the International Criminal Court, 12080/11, 12 July 2011.

⁸³2010/427/EU: Council Decision of 26 July 2010 establishing the organisation and functioning of the European External Action Service, OJ L 201, 3.8.2010, p. 30-40. Declaration by the High Representative, Catherine Ashton, on behalf of the European Union on the occasion of the tenth anniversary of the entry into force of the Rome Statute of the International Criminal Court, 12091/1/12 REV 1, Brussels, 1 July 2012: https://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/131444.pdf. Declaration by the High Representative, Catherine Ashton, on behalf of the European Union on the occasion of the fifteenth anniversary of the adoption of the Rome Statute of the International Criminal Court, 12482/1/13 REV1, Brussels, 17 July 2013.

The High Representative is any person who was the founder and promoter for the protection of human rights in the European and international context⁸⁴. A figure who was appointed by the Council following a proposal from the High Representative according to ex Art. 33 TEU covering tasks that vary between diplomatic culture, political dialogue, coordination and cooperation with local authorities of third countries and international organizations arriving at the final topic which is that of international criminal justice and not only⁸⁵ through a budget (about 40%) which came from the EU⁸⁶. The EU thus shows a constant, precise commitment to international criminal justice as we have also recently noticed in the case of the war in Ukraine where with greater efforts the fight against economic crimes and the defense of financial interests and the internal

⁸⁴Council Decision 2012/440/CFSP of 25 July 2012 appointing the European Union Special Representative for Human Rights, OJ L 200, 27.7.2012, p. 21-23. Council of the EU, Declaration by the High Representative, Federica Mogherini, on behalf of the EU on the occasion of the Day of International Criminal Justice, 17 July 2019, Press release, 16 July 2019: <https://www.pubaffairsbruxelles.eu/eu-institution-news/declaration-by-the-high-representative-federica-mogherini-on-behalf-of-the-eu-on-the-occasion-of-the-day-of-international-criminal-justice-17-july-2019/> Council of the EU, Day of International Criminal Justice: Declaration by the High Representative, Josep Borrell, on behalf of the European Union, Press release, 16 July 2022: <https://www.consilium.europa.eu/en/press/press-releases/2022/07/16/day-of-international-criminal-justice-declaration-by-the-high-representative-josep-borrell-on-behalf-of-the-european-union/>

⁸⁵Council of the EU, Day of International Criminal Justice: Declaration by the High Representative, Josep Borrell, on behalf of the European Union, Press release, op. cit. art. 3, lett. c).

⁸⁶Assembly of the State Parties, Financial statements of the International Criminal Court for the year ended 31 December 2020, ICC-ASP/20/12, 23 July 2021, Annex 1, p. 45ss: https://asp.icc-cpi.int/sites/asp/files/asp_docs/ASP20/ICC-ASP-20-12-ENG.pdf and of 22 August 2022: <https://asp.icc-cpi.int/sites/asp/files/2022-09/ICC-ASP-21-12-ENG.pdf>

market have reopened paths of unification of different cultures under the roof of the protection of human life and human rights on a now global level.

The prosecution of crimes against humanity and the role of the EU

International criminal justice to date, despite the fact that it is very early to reach hasty conclusions, allows us to be too enthusiastic given that giant steps have now become. We remember the European Network on Genocide, the European Network for investigation and prosecution of genocide, crimes against humanity and war crimes⁸⁷; the Specialist Chambers and the Specialists Prosecutor's Office for related crimes that are committed and concluded during the conflict in Kosovo (Cimiotto, 2016; Muharremi, 2016)⁸⁸ as well as; the latest actions taken within the EU to support the investigations and prosecution of the related crimes committed during hostilities in the Ukrainian war (Caianiello, 2022; Lanza, 2022).

Already in November 2022 the European Commission presented the relevant options to fill the gaps for the establishment of an ad hoc court and to support the UN and the international

⁸⁷2003/335/JHA: Council Decision 2003/335/JHA of 8 May 2003 on the investigation and prosecution of genocide, crimes against humanity and war crimes, OJ L 118, 14.5.2003, p. 12-14.

⁸⁸See the project EULEX (EU Rule of Law Mission in Kosovo).

community through the criminal justice cooperation network (Eurojust)⁸⁹. For the first time, perhaps, Eurojust and ICC have tried to discuss and put into practice the foundations of their cooperation for the related crimes committed in Ukraine⁹⁰ through the Joint Investigation Team (JIT)⁹¹. We can speak for a hybrid cooperation that started from EU Member States such as Lithuania and Poland in collaboration with third countries such as Ukraine within the coordination umbrella of the Eurojust (Bodnar, 2018)⁹². The cooperation network has also developed with other Member States such as Estonia, Lithuania, Slovakia and Romania and always providing useful elements to the ICC⁹³. Prosecutor's Office. This is a joint initiative which also involved Europol to facilitate the collection of evidence and the carrying

⁸⁹See from the President Von der Leyen: Statement by President von der Leyen on Russian accountability and the use of Russian frozen assets, Statement/22/7307, Brussels, 30 November 2022:

https://ec.europa.eu/commission/presscorner/detail/da/statement_22_7307

⁹⁰“Justice must prevail”: <https://news.un.org/en/story/2022/04/1117222>

⁹¹EUROJUST, Estonia, Latvia and Slovakia become members of joint investigation team on alleged core international crimes in Ukraine, Press Release, 31 May 2022: <https://www.eurojust.europa.eu/news/estonia-latvia-and-slovakia-become-members-joint-investigation-team-alleged-core-international>

⁹²EUROJUST, Eurojust supports joint investigation team into alleged core international crimes in Ukraine, Press Release, 28 March 2022: <https://www.eurojust.europa.eu/news/eurojust-supports-joint-investigation-team-alleged-core-international-crimes-ukraine> and of 24 March 2023: <https://www.eurojust.europa.eu/news/joint-investigation-team-alleged-core-international-crimes-ukraine-one-year-international>

⁹³ICC, Office of the Prosecutor joins national authorities in Joint Investigation Team on international crimes committed in Ukraine, Statement by ICC Prosecutor, Karim A.A. Khan QC, 25 April 2022: <https://www.icc-cpi.int/news/statement-icc-prosecutor-karim-aa-khan-qc-office-prosecutor-joins-national-authorities-joint> and of 27 April 2022: <https://www.icc-cpi.int/news/statement-icc-prosecutor-karim-aa-khan-qc-arria-formula-meeting-un-security-council-ensuring>

out of investigations into international crimes committed in Ukraine. The will is more than declared for a now international flowering of international criminal justice with a final objective that the Prosecutor of the ICC put in his mouth “a shared obligation of humanity” (Tan, Yang, 2023)⁹⁴.

The reality of the Ukraine has put into practice an original stage of cooperation through joint investigation teams in the form of collaboration between Member States of the EU and the European Agency with the participation of third countries at the office of the ICC⁹⁵. A criminal cooperation mechanism that establishes and allows the judicial police authorities of the participating countries to cooperate towards carrying out investigations for the collection of evidence and to share information for material that will have an evidentiary nature (Caianiello, 2022). Already in March 2023 this type of cooperation also crossed other borders and reached the US which signed the relevant Memorandum of Understanding⁹⁶. The investigative team under the coordination of the Eurojust

94EUROJUST, Press conference-Joint investigation team on alleged core international crimes in Ukraine of 20 February 2023: <https://www.eurojust.europa.eu/news/eurojust-media-update-joint-investigation-team-alleged-core-international-crimes-ukraine>

95Joint investigation teams were introduced by Council Framework Decision 2002/465/JHA of 13 June 2002: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32002F0465>

96EUROJUST, National Authorities of the Ukraine joint investigation team sign Memorandum of Understanding with the United States Department of Justice, Press Release, 4 March 2023: <https://www.eurojust.europa.eu/news/national-authorities-ukraine-joint-investigation-team-sign-memorandum-understanding-usa>

took into consideration the work carried out by the International Center for the Prosecution of Crimes of Aggression against Ukraine, based in The Hague with the final objective of collecting evidence for the crime of aggression against Ukraine⁹⁷.

Within this cooperation system it was necessary to change the Eurojust to an ad hoc reform with many new functions as well as the extension to investigate and prosecute serious crimes including international crimes⁹⁸. This change did not include Eurojust retaining and analyzing the collection of judicial data collected as well as cooperating directly with international judicial authorities such as the ICC. These gaps were covered by the European Commission after the relevant modification proposal with a new regulation⁹⁹, then adopted¹⁰⁰, bringing into

⁹⁷European Commission, Statement by President von der Leyen on the establishment of the International Centre for the Prosecution of Crimes of Aggression against Ukraine, Brussels, 4 March 2023:

https://www.eeas.europa.eu/delegations/ukraine/statement-president-von-der-leyen-establishment-international-centre_en?s=232

⁹⁸Regulation (EU) 2018/1727 of the European Parliament and of the Council of 14 November 2018 on the European Union Agency for Criminal Justice Cooperation (Eurojust), and replacing and repealing Council Decision 2002/187/JHA, PE/37/2018/REV/1, OJ L 295, 21.11.2018, p. 138-183.

⁹⁹Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulation (EU) 2018/1727 of the European Parliament and the Council, as regards the collection, preservation and analysis of evidence relating to genocide, crimes against humanity and war crimes at Eurojust, COM/2022/187.

¹⁰⁰Regulation (EU) 2022/838 of the European Parliament and of the Council of 30 May 2022 amending Regulation (EU) 2018/1727 as regards the preservation, analysis and storage at Eurojust of evidence relating to genocide, crimes against humanity, war crimes and related criminal offences, PE/18/2022/REV/1, OJ L 148, 31.5.2022, p. 1-5.

practice as a reality that from 1 June 2023 a new operationalization of the new Eurojust functions at now not only European but also international¹⁰¹. This novelty is considered due to the large amount of evidence that is available after the reality of the war in Ukraine and the continuous propaganda from social media that now had to distinguish reality for the collection of data through concrete observations, digital evidence with the final objective of punishing the serious international crimes. There are certainly many problems given that the authorities involved are many and the elements of independence, impartiality and seriousness of the collection of digital evidence are not many. The standards based on the terms of the rule of law and the independence of the judiciary at the European level are not optimal as is also noted by the Venice Commission of the Council of Europe¹⁰².

A joint action that questions why Ukraine did not sign the StICC

¹⁰¹See after the amendment art. 4, par. 1 of the relevant regulation the lett. j) that affirms: “(...) “support the actions of Member States to combat genocide, crimes against humanity, war crimes and related crimes, including by preserving, analyzing and preserving evidence relating to such crimes and related crimes and by enabling the exchange of such evidence or otherwise making it directly available to the competent national authorities and international judicial authorities, in particular the International Criminal Court (...)”.

¹⁰²Ukraine-Urgent joint opinion of the Venice Commission and the Directorate General of Human Rights and the Rule of Law (DGI) of the Council of Europe, CDL-PI(2021)004-e, 5 May 2021:

[https://www.venice.coe.int/webforms/documents/?pdf=CDL-PI\(2021\)004-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-PI(2021)004-e)

Ukraine-Joint Urgent opinion of the Venice Commission and the Directorate General of Human Rights and Rule of Law of the Council of Europe, CDL-PI(2021)010-e, 6 May 2021:

[https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-PI\(2021\)010-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-PI(2021)010-e)

and at the same time participates in the work of the investigative team and on Prosecutor's Office. Perhaps the reasons are political for the signing of the StICC on the side of Ukraine but thus it cannot be excluded that the commission of crimes and hostilities by the armed forces under the control and responsibility are profiles of many complexities especially due to the use of armaments supplied by the EU in the territory of the Ukraine. The majority of EU countries have unfortunately had a troubled history for years with the former Soviet Union. So talking about impartiality and carrying out a perfect task for the prosecution of crimes is perhaps not a very realistic reality. Within this context some countries such as Germany, France and the Netherlands have started to carry out investigations on their own without fully cooperating with Eurojust and third countries from the East (Ambos, 2022). The problems and efforts show that the investigative activities perhaps do not have a univocal coordination and we believe that it is right and also because the results will have to be filtered, evaluated and valorised by the same judges that have to take a position for the punishment of crimes.

It is also true that the office of the Prosecutor does not participate as a member of its own investigative team but it is the data collection office coordinated by Eurojust that continues its work as a simple participant. Participation is not causal but is

the result of the need to reinvigorate the principles of impartiality and independence at the ICC. And also for this reason, according to the StICC, since March 2022 it has independently opened a related investigation into the war situation in Ukraine¹⁰³.

Concluding remarks

From what we have understood so far, the EU has put multilateralism and international cooperation into practice as a goal of European integration and a step towards international justice within the spirit of mutual trust towards institutions and jurisdictions such as the ICC and the ICJ.

The ICJ in the dispute between Ukraine and Russia has provided evidentiary and informative material that confirms and stops discussions and questions on treaty norms, opening the way to new perspectives of participation of the EU within the spirit of the foreign and defense policy.

The level of cooperation with the ICC plays a significant supporting role in various forms. On the other hand, the EU plays an important role in supporting judicial cooperation for the

¹⁰³ICC, Statement of ICC Prosecutor, Karim A.A. Khan QC, on the Situation in Ukraine: Receipt of Referrals from 39 States Parties and the Opening of an Investigation, Press Release, 2 March 2022; ICC, Presidency assigns the Situation in Ukraine to Pre-Trial Chamber II, Press Release, 2 March 2022: “(...) without fear and favour and with independence and with integrity (...)”.

arrest, surrender, collection of digital and non-digital data, freezing and confiscation of assets as an important service for the international justice stage, making the commission of crimes more effective. The capacity, direction and coordination of investigations function as a bridge at European and international level for investigations, especially in the context of the ICC. Main body in the support and cooperation team the Eurojust which plays the role of international director for judicial cooperation to an orchestra where the musical organs are various and the director of the orchestra is the Prosecutor of the ICC who will evaluate and take his own positions for the criminal prosecution of those who committed the relevant crimes both in Ukraine and in every now place that there are not only suspicions but also elements for the capture of international crimes.

Of course, there are many criticisms regarding the effectiveness of such a fast cooperation system provided within the EU. Above all, the arguments are the same as in recent years which speak for the independence of the judiciary, the rule of law, due process towards international criminal justice as an instrument that promotes and defends fundamental values while also ignoring the violation of the same values. The selection of violations of the rule of law perhaps risks the credibility of international justice, especially in the sector of cooperation in

judicial matters.

In our opinion, the war in Ukraine is not the only case worldwide. Perhaps the moment that began after the pandemic showed the definition of the role of international justice to quickly develop an investigation and cooperation plan for international crimes that we have never seen in the past. The war in Ukraine is not an isolated case, but it is the beginning of a continuous fight against human rights violations. There are many theaters of war, certainly many political and strategic interests at a geopolitical level, not so much European but also global. What is important is that the now political will in front of European values implies an identification of defense, freedom and democracy. The march towards European and global judicial cooperation through multilateral activism is an important step to promote the defense of one's fundamental values based on customary principles of international law and where the treaties themselves ask for it, as the history of international law has shown up to the present day.

The process of European integration is characterized by being based on a logic of small steps forward where the results have been achieved as the result of changes that are gradual and imperceptible. The evolution of the jurisprudence is relative to the value of international law in the internal legal system and not only as a precise testimony. There is always the hope that the

evolution that always takes place with respect to a phenomenon of multiplication of international tribunals as “servants” of an ever-evolving international justice system to deal with new crises and problems will be consolidated in time.

In finis, it is now an endless and non-returning reality that the law of the ICJ is a living law, evolving inspired by the rule of law and based on rules that respect first and foremost human rights, as well as the related mechanisms for respect for rules and rights (*ubi ius ubi re medium*) as happens in every democratic society. The right to effective judicial protection between various dogmas such as that of the EU is placed alongside principles such as direct effect and *primauté* as the basis for development of this now global order. This international justice offers and affirms the jurisprudential lines relating to the responsibility of member states for violations of international law as well as that which also concerns the *droit de regard* of the Union which respects internal procedural rules. It is not a stretch to say that jurisdictional protection extends the obligations of reasoning which are subject to and linked to the guarantee of defense rights in proceedings even if negative consequences result for the individuals involved. The role of the international judge is to enhance the elements that come from the guarantees of international justice to a legal framework in force at a standardization that extends to three levels: United

Nations, European Union and national states. Social media have now become the new sources of communication in a world which, before everyone's eyes, has become full of differences and which seeks remedies through global tools where democracy, the accountability of this type of tools are responses to the links between societies civilians and global institutions, thus also increasing the dissatisfaction a ruler may feel with a single government that is not under his powers. The extraordinary strength and evolution of legal institutions in our times overlap, compose and integrate in light the strength of the awareness of the various differences that shape the harmonization tools at European and international level. The development of approaches, criteria, and methods are not many and sufficient for the successes of a scientific koinè which is already achieved but only appreciations of links that are pre-established and established through different legal cultures of a national, European and international nature. Perhaps this is also the charm of international justice as a new science that bases “anthropos” and respect for human rights on a reality that is always in crisis and difficulty with thousands of problems that today's young people and beyond they are called to face and respond.

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